

it covenants not to authorize the use of the Seibert patents outside of the New England states. Whether in violation of this covenant or not, it entered into another contract with the Nathan Company, under which the latter has embarked in the manufacture and sale of lubricators, and, as clearly shown by the affidavits, the rivalry between the parties has become so fierce that the price has been reduced from \$50 to \$60 a set to \$20 or \$23. In other words, the value of defendant's monopoly (and it was evidently intended by the contract to give it a monopoly outside of the New England states) has been practically destroyed by the act or connivance of the plaintiff. Under these circumstances, as there is no question made with regard to the defendant's responsibility, we think the court cannot properly be called upon to enjoin in a summary way the further continuance of defendant's business.

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### THE WASP.<sup>1</sup>

HUDSON *et al.* v. THE WASP.

(District Court, E. D. New York. March 8, 1888.)

#### SALVAGE—WHAT CONSTITUTES—PERIL.

The barge Wasp, while being towed up the Atlantic coast by the tug America, encountered a gale, and was anchored inside the Delaware breakwater, the America anchoring about half a mile distant. The water becoming rougher, the Wasp, desirous of changing her position, signaled to the America. Her signal was answered by the tug McCaulley, which went to her, and was informed,—according to the McCaulley's story,—that she had 18 inches of water in her hold. The McCaulley thereupon notified the America, and was told,—as the McCaulley's witnesses testified,—that the America would not go to the assistance of the barge, whereupon the McCaulley returned, and towed her to a place of safety. On these facts the McCaulley claimed to have performed a salvage service, asserting that the refusal of the America to go to the Wasp put the latter in great peril, and that without the aid of some tug the barge would have sunk at her anchor. The Wasp asserted that she had no water in her of any consequence, and that the McCaulley was not told that she had 18 inches; while the America swore that she had never refused to go to the aid of the Wasp, but had told the McCaulley that she would go as soon as she could get up her anchors. *Held*, on the evidence, that the America had not refused to go to the barge, and, as she was bound by her towing contract to render this service, the Wasp was at no time in peril; that the McCaulley's service was therefore not a salvage service, and the libel should be dismissed.

In Admiralty.

*Goodrich, Deady & Goodrich*, for libelants.

*Samuel Park and Butler, Stillman & Hubbard*, for claimants.

BENEDICT, J. This is an action against the barge Wasp, to recover for a salvage service claimed to have been rendered that barge in December, 1885, by the tug McCaulley. It appears that in December, 1885, the tug America, while engaged in towing the barge Wasp and the barge

Reported by Edward G. Benedict, Esq., of the New York bar.

Hornet from Norfolk, Va., to New London, Conn., met with heavy weather, which caused her to take her tow into the Delaware breakwater for safety, where she anchored the Wasp about half a mile from the breakwater. A gale from the north-east came on, and afterwards, on the morning of the 27th of December, the wind shifted to the north-west, blowing heavily, and raising a rough sea at the place where the Wasp was anchored. The barge labored in the sea, and one or two of her hatches were stove in, whereby some water passed into her hold. She had on board a competent crew, was not leaking, and her pumps kept the water under control. Her master, however, determined that it was wise to have her moved to a safer location near the ice-breaker, and at about 8 or 9 o'clock on the morning of the 27th set a signal in his rigging to call the tug America to him for the purpose of being moved by her. At this time the America was at anchor about a half a mile away, with sufficient steam up to enable her to navigate. There was also about the same distance away another tug, called the McCaulley. This latter tug, on seeing the signal on board the Wasp, proceeded to her, and tendered her services. According to the testimony of those on board the Wasp, her services were declined, but she was requested to go to the America, and inform her that the Wasp desired to be towed up to the ice-breaker before the tide changed. After having spoken the Wasp, the McCaulley proceeded to the America, and there had a conversation with the master of the America about which there is a conflict of testimony. It resulted, however, in the McCaulley's returning to the Wasp, taking a hawser from her, and holding her up to her anchors until one of her anchors was secured, and then towing her, with one anchor down, to a place near the ice-breaker, where she was sheltered from the wind and waves. This service occupied from one to three hours, according to the estimates. It involved no extraordinary peril to the McCaulley, and was of benefit to the Wasp. The peculiarity of the case consists in this. According to the testimony of the captain of the McCaulley, when he spoke the Wasp the master of the Wasp informed him that she had 18 inches of water in her, and requested him to inform the master of the America of that fact. When he reached the America he did report that fact to the captain of the America, and thereupon the master of the America refused to go to the Wasp, but told the McCaulley to go to her, and do what he could. Accordingly the libellant contends that the refusal of the America to go to the Wasp placed the Wasp in great peril, because without the aid of some tug the Wasp would have sunk at her anchor; that the McCaulley was the only tug able to relieve her, and, having done so, is entitled to salvage reward. On the part of the Wasp the evidence is that she had no water in her of any consequence; that the captain of the McCaulley was not told that she had 18 inches of water in her; that the services of the McCaulley were declined in the first instance, and only accepted in the end because of the further statement of the master of the McCaulley that the captain of the America had directed him to take the Wasp to the ice-breaker. There is also a sharp conflict as to what passed between the McCaulley and the captain